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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re Antonio E., et al., Persons Coming
Under the Juvenile Court Law.

SOLANO COUNTY HEALTH &
SOCIAL SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

K.C.,

Defendant and Appellant.

A153671

(Solano County
Super. Ct. No. J43189, J43188,
J43187, J43186)

K.C. (Mother) appeals an order terminating her parental rights to her four children, Antonio E., Robbie E., A.E., and J.C. (collectively, Minors or the children). Her sole contention is that the trial court should have applied the “beneficial relationship” exception to the termination of her parental rights to her two older children, Antonio and Robbie. We shall affirm the order.

I. BACKGROUND

These dependency proceedings were before a different panel of this division in 2017. (*In re A.E.*, A149302, filed June 12, 2017.) In that appeal, the children’s father,

R.E. (Father), challenged an order terminating his reunification services.¹ We affirmed the order.

A. Family Maintenance and the Petition

As explained in the 2017 *In re A.E.* opinion, the Solano County Health and Social Services Department (the Department) filed a petition on behalf of Minors in September 2015, when Antonio was seven years old, Robbie was five years old, A.E. was almost two years old, and J.C. was eight months old. As later sustained, the petition alleged Mother had a history of opiate abuse that impaired her judgment and ability to care for Minors; she had unresolved mental health and/or emotional problems that periodically rendered her unable to care for Minors; Father had cognitive delays that impaired his ability to provide safe and appropriate care; he knew of Mother's opiate use and had not made safe arrangements for Minors' care in his absence; he had not made arrangements to meet Minors' medical, dental, and developmental needs; and Mother and Father had participated in voluntary family maintenance services that had not resolved the family's problems.

The family maintenance services had begun after the youngest child, J.C., tested positive for Percocet and Oxycodone when she was born in January 2015. Mother submitted several positive drug tests when she was receiving voluntary family maintenance services, and on several home visits and meetings was found to be “ ‘sleeping, exhausted, withdrawn, unresponsive, and lethargic.’ ” She had suffered from depression since she was 15 years old and had not consistently engaged in mental health treatment or medication management.

¹ Father is not a party to this appeal, and we shall discuss the facts related to him only as necessary to understand the limited issue now before us. And, because Mother challenges the termination of her parental rights only as to the two older children, Antonio and Robbie, we shall focus our discussion on the facts relevant to her relationship with those two younger children. At the request of the Department, because Mother has raised no issues regarding the younger children, we shall dismiss the appeal as to them.

The children's medical, dental and developmental needs had not been attended to properly. Some of Robbie's and Antonio's teeth were completely decayed. Robbie's front teeth had to be removed. Robbie, A.E., and J.C. were found to be developmentally delayed, and Antonio had an Individualized Education Plan (IEP). Several times between May 2015 and September 2015, a social worker found Minors with dirt caked on their skin, rashes, rotten teeth, and flea bites. A.E. had severe eczema, which appeared to be untreated. The front yard of the family's home was cluttered with debris. There were wires and debris throughout the living room. Food wrappers and crumbs, empty bottles, debris, and dirty clothing were in the children's bedroom. Antonio was chronically absent or tardy at school. He had been absent 46 days and tardy 33 days during the 2014–2015 school year, and he had to repeat first grade.

On one occasion, when the social worker arrived for a home visit, Antonio and Robbie told her Mother was sleeping in the living room and Father was not at home. Antonio later told the social worker his parents slept all day and he had to wait for them to wake up to feed him. He said he had to wake his parents in the morning to take the children to school.

During the voluntary family maintenance period, the Department received reports that Mother abused pain medication in Minors' presence, that the children were left unsupervised for long periods, that their diapers and clothing were dirty, and that people came in and out of the home and it appeared that the people in the home were using methamphetamine.

Minors were detained. Antonio and Robbie were placed together in one foster home, and the younger children were placed together in another.

B. Interim and Six-Month Review

A report for a March 2016 interim review indicated that Mother and Father were visiting Minors, but often appeared overwhelmed during visits. They tended to chase the younger children, leaving Antonio and Robbie to fend for themselves. They did not encourage the younger children to meet developmental milestones, for instance by encouraging A.E. to talk or J.C. to walk. Mother had not engaged in mental health

services, a parenting program, or substance abuse treatment. She had admitted to using opiates and had missed several drug tests.

Before the six-month review hearing scheduled for May 10, 2016, the Department reported that Antonio was developmentally on track. Robbie required language and speech services and specialized academic instruction. He had tantrums, but was becoming more able to regulate his emotions. He had been seeing a therapist. During a therapy session, he said he was sad because he missed his parents, and he wished they would get a home. Antonio and Robbie had been placed with Father's mother (Grandmother), who wanted to adopt them or become their legal guardian. She was unable to take care of all four children. Mother and Father had been visiting Minors consistently. Antonio and Robbie seemed to understand they were visiting their parents and hugged them after being prompted, but they did not show much excitement.

The contested six-month review hearing took place in June and July 2016. The evidence showed that Mother was now taking part in a parenting group and substance abuse services, was randomly testing for substances, and was living at Bridge to Life, a residential program offering substance abuse and counseling programs. The juvenile court continued reunification services for Mother and terminated them for Father. Father appealed, and in the 2017 *In re A.E.* opinion, we affirmed the order.

C. 12-Month Review

The 12-month reviewing hearing was scheduled for November 22, 2016. The Department reported that Mother continued to reside at Bridge to Life. Antonio was developmentally on track for an eight-year-old. Robbie was developmentally on track, with the exception of a delay in his social skills and speech. He had an IEP that included speech services and extra support services for class work. A meeting had been scheduled for Grandmother, Mother, and a new speech teacher to discuss services for Robbie. The report noted that it was crucial for Mother to participate in such meetings in order to understand Robbie's academic challenges, learn to advocate for services, and help him address his challenges. Robbie had frequent temper tantrums. The Department noted

that it would be “vital” for Mother to collaborate with Robbie’s therapist or participate in sessions to understand his emotional needs.

Mother was participating in individual therapy and substance abuse services. Her visits with the children had progressed from supervised to unsupervised, and she had received overnight weekend visits. During one supervised visit, she was very successful in helping Robbie with his homework in an appropriate manner. On another visit, she consoled Antonio when he talked about a “bullying situation,” and explained how important it was for her and Grandmother to work together to resolve the issue. Antonio and Robbie reported that they enjoyed the overnight visits. The Department recommended that Minors be returned to Mother on a staggered schedule, with the younger children returning first to allow Mother to develop and demonstrate her ability to care for them.

At the 12-month review hearing, counsel for the Department and the court commended Mother on the progress she had made. The court returned the younger children to Mother’s care and continued Antonio and Robbie in out-of-home placement.

D. 18-Month Review

An 18-month status review hearing was set for March 21, 2017. Mother was living with the younger children at Bridge to Life. The case manager at Bridge to Life said that Mother was in her bedroom 24 hours a day, she appeared disengaged, and her children had little outside or playroom activity. The children sometimes left the room on their own. Mother was often found asleep, leaving the children unattended. She frequently appeared discouraged and unhappy, and she had not developed a routine with the children.

Antonio and Robbie had a visit with Mother and the younger children during Christmas 2016. At a family team meeting on December 30, 2016, all four children were present. Mother was still in her pajamas, and she “presented with a flat affect, was difficult to engage, and spoke very little about her feelings regarding the situation or the concerns of the team.” Mother said she was sometimes overwhelmed. After the meeting, Mother’s behavior improved briefly but soon reverted; in January 2017 she was

struggling to manage the children, not following her schedule, and appeared uninterested in parenting them. During a January 17, 2017 meeting, Mother rarely smiled or made eye contact with her children, and she appeared “disengaged.”

Antonio was developing normally and he appeared stable emotionally. Robbie had frequent temper tantrums; although the outbursts had recently decreased, they continued to occur after he visited with Mother and his other siblings. Robbie had tried to choke A.E. during a weekend visit with Mother, and he had tried to choke Grandmother’s puppies.

Grandmother reported a number of concerns about Mother’s actions with Antonio and Robbie. During weekend visits, Mother took Antonio to homes that had cats, although he was severely allergic to cats. The children wore the same clothes all weekend when they were in Mother’s care. They played an inappropriate video game at the home of Mother’s friend. On one occasion, the children stayed late at the home of a male friend of Mother’s; Robbie, A.E., and J.C. fell asleep before dinner came and they did not eat, and the next day they had a late breakfast and no lunch as of 2:45 p.m. On another occasion, Antonio and Robbie stayed the night at the home of Mother’s mother (who had not been approved to care for them because of her own child welfare history), and they all slept together in the grandmother and her boyfriend’s king-sized bed. Antonio had told Grandmother that he and Robbie went to their maternal grandmother’s house with Mother and that Mother stayed in the garage watching vampire movies while Antonio and Robbie watched television in the house. When Mother returned Antonio and Robbie to Grandmother one Sunday afternoon, Antonio said he had had only two cookies for breakfast that morning and he was very hungry. Grandmother also reported that, shortly after the younger children were returned to Mother’s care, Mother stopped calling Antonio and Robbie.

Mother was participating in therapy sessions, at which the children were present. Mother was patient with the children and provided praise. Her mental health appeared to have stabilized as of mid-February, 2016. Her drug tests had been negative and she appeared to be stable in her recovery.

Antonio said he wanted to live with Mother, he loved her, she created him, and he had part of her “ ‘DNA.’ ” He felt that Mother could take care of him. He said that during a five-day holiday visit to Mother, he “ ‘sometimes’ ” bathed and brushed his teeth. When asked what he would wish for his family, he said he would like to spend more time with Mother and Father and for them to take him to the arcade. When asked what he would like to tell the court, he said he wanted to live with Mother and Father. He said he enjoyed his weekend visits, but noted that A.E. was very active and would not sit still.

Robbie said he had a good time during his visits with Mother and his siblings, but that he had a lot of time outs.

The Department recommended that Antonio and Robbie remain in out-of-home placement, that Mother’s reunification services for them be terminated, and that the court set a hearing pursuant to Welfare and Institutions Code section 366.26² as to Antonio and Robbie. It recommended that A.E. and J.C. remain in Mother’s care, with family maintenance services.

After a contested hearing, the juvenile court found Mother was making significant progress in the residential substance abuse program, continued reunification services, and set the matter for a 24-month permanency hearing. The court also declared Antonio and Robbie to be Indian children; all four children had been enrolled as members of the Cherokee Nation.

E. 24-Month Review

The 24-month review hearing was set for September 5, 2017. The Department filed a report recommending that the court terminate reunification services regarding Antonio and Robbie and set a section 366.26 hearing. It noted that the younger children had been removed from Mother in July 2017, based on the Department’s concern about mother’s ability to care for her children on a daily basis and meet their needs.

² Statutory references are to the Welfare and Institutions Code unless we indicate otherwise.

Mother was still living at the Bridge to Life shelter, but was on a 30-day exit plan. She had not yet obtained permanent housing. She had graduated from Dependency Drug Court, and her drug tests were negative. Her visits with Antonio and Robbie had become supervised in April 2017, after the Department learned Mother was using corporal punishment on Antonio and Robbie during unsupervised overnight visits.

Antonio and Robbie were still living with Grandmother, with the Cherokee Nation's approval. She was meeting their emotional, medical, developmental, and academic needs, and she was committed to adopting them if they did not reunify with Mother. Antonio was on track developmentally and academically, and his mental and emotional health appeared stable. Robbie continued to have delay in his social skills and speech, and he had an IEP. His emotional outbursts had increased since visits with Mother had been reduced from unsupervised weekend overnight to supervised day visits.

During a meeting with Robbie's therapist on June 21, 2017, Mother said that she had difficulty expressing emotion. When asked about her attachment to Robbie, she said she " 'kinda sorta' " felt attached; when asked what " 'kinda sorta' " meant, she said, " 'not really.' " Mother began participating in therapy sessions with Robbie; the therapist reported that Robbie responded well to redirection from Mother and she appeared confident using skills she had learned in other services. Mother reported that her attachment with Robbie was " 'starting to get better.' " She was learning to ask him more in-depth questions, and she came to her visits with the children prepared with food.

The Department's report noted that Mother had the opportunity to have frequent phone contact with Antonio and Robbie, but she had "struggled" to maintain regular phone contact with them "as she often states she is 'too busy' or 'tired.' " The Department was concerned about Mother's capacity to meet Robbie's special needs, advocate for him without direction from the Department, and manage her own mental health.

Antonio and Robbie continued to say they wished to live with Mother. When asked who would live in his house, Antonio "describe[d] a mansion that would include his mother, father, siblings, paternal grandmother, aunts, uncles, and cousins."

A contested 24-month hearing took place on October 2, 2017. The social worker who was until recently assigned to the case, Jennifer Lovelace, testified that Mother was living with her mother's boyfriend's mother. Maternal grandmother had a child welfare history and struggled with alcohol abuse, and her home was not a suitable environment for Minors.

Lovelace testified that Mother had said she wanted to see Antonio and Robbie off to their first day of school in late August. But she did not to arrange see them off, and she did not go to their school at the end of the day, call the night before to wish them a good day, or call them that evening to ask how their day had gone. She had not spoken with their teachers to see how they were doing in class.

The current social worker, Leticia Hammons, testified that Mother was attending therapy appointments with the children. Her drug tests were negative. Mother had recently cancelled a visit with Minors because she had injured her ankle, although the Department had changed the location of the visit to accommodate her injury. The Department offered to change the date of the visit, but Mother declined because she was attending drug court on the alternate date. Although Mother had graduated from drug court, she said she wanted to continue attending until the dependency case ended.

Mother had telephone calls scheduled with Antonio and Robbie for Tuesdays and Thursdays, but had been offered the opportunity to call them every day if she wished. Mother was not taking advantage of the chance to have daily calls, and she missed some of the Tuesday and Thursday calls. Hammons was concerned that the inconsistent calls reflected Mother's level of bonding with Antonio and Robbie and her interest in their well-being.

Mother testified that she went to Narcotics Anonymous (NA) meetings several times a week. With the exception of one occasion when she sprained her ankle, she had visited with Antonio and Robbie regularly.

Although the juvenile court commended Mother for addressing and overcoming her substance abuse issues, it indicated it was "troubled by the lack of bonding and commitment that [she] has with regard to these children. Basic things like meeting with

their teachers and following their school progress, inconsistencies in visitations and telephone calls, resulting in the need to have her visitations with them supervised.” The juvenile court found that return of the children to their parents would create a substantial risk of detriment, found reasonable services had been provided, and set the matter for a hearing pursuant to section 366.26 for January 2, 2018.

F. Termination of Parental Rights

Before the section 366.26 hearing, the Department filed a report. Mother was renting a room from the mother of her mother’s boyfriend. She was employed part-time. She had been sober for almost two years and continued to attend NA meetings.

Antonio was developing normally and was doing well in school. Robbie continued to have an IEP that included speech services and extra support for classwork. He was performing below average in school. He was receiving therapy, which his therapist thought he should continue. Grandmother continued to meet Antonio and Robbie’s physical, emotional, developmental, medical, and academic needs, and she was prepared to adopt them. The boys were happy in their placement and affectionate toward Grandmother. The Cherokee Nation supported the placement and adoption. Both Antonio and Robbie were “generally adoptable.” Although they wished to live with Mother (especially Antonio), they enjoyed living with Grandmother and were comfortable being placed with her long term.

Mother was visiting with the children, interacted with them appropriately, and provided food and drinks. After visits, Antonio and Robbie tended to fight more. They had not said anything about how they felt about visits with Mother. She had phone calls with Antonio and Robbie scheduled for twice a week, and she was consistent in making the calls “for the most part.” Antonio would talk to her on the phone, but Robbie often jumped on the couch, went to watch television, or said, “ ‘I don’t have anything to say.’ ”

At the section 366.26 hearing, a social worker in the county’s adoptions unit testified that Grandmother was committed to adopting Antonio and Robbie. However, if Grandmother could not adopt them, the social worker believed she would be able to find a home for them; she had located approximately four families who were interested in

adopting a sibling group in their age range. She believed all four children needed a stable, permanent home that provided structure, and that adoption was in their best interests.

Mother testified that, because of the bond she shared with the children, she did not think her parental rights should be terminated. When asked about her relationship with Antonio, Mother said that before the Department became involved, she thought she was “doing okay” with the children, but she now realized that “there wasn’t as much of a connection when there is using and things like that involved.” Mother had stopped using drugs two years previously. Since then, she had been “more present for conversations with [Antonio] and with his needs,” and more able to listen to him talk about his interests, such as video games and drawing, and about his schoolwork. She often talked to him about school. In previous years, she had gone with Antonio to his first day of school, but she had not attended any other school functions.

Mother testified that her relationship with Robbie had improved, and that she was able to discuss with him issues that arose in therapy regarding his need to manage his anger and communicate his feelings. Robbie had cognitive delays, and Mother was aware of his IEP and speech therapy schedule. She had attended an IEP meeting at the end of the last school year. She had missed an occupational therapy assessment with him because she was struck in traffic.

Mother was currently having supervised visits with Minors once a month. She had not had unsupervised visits since April or May of 2017. Her calls to Antonio and Robbie had become “[a] tiny bit” less consistent since her reunification services were terminated.

The juvenile court found Minors were both generally and specifically adoptable. It terminated the parental rights of Mother and Father and selected adoption as the permanent plan for the children.

II. DISCUSSION

Mother contends the juvenile court erred in not applying the section 366.26, subdivision (c)(1)(B)(i) exception to the termination of parental rights with respect to her

older children, Antonio and Robbie, because she has maintained regular visitation with them and they would benefit from continuing the relationship.

When a hearing has been set pursuant to section 366.26 to select and implement a permanent plan for a child, “the interests of the parent and the child have diverged . . . [Citation.] ‘[C]hildren have a fundamental independent interest in belonging to a family unit [citation], and they have compelling rights to be protected from abuse and neglect and to have a placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child.’ [Citation.] Adoption gives a child the best chance at a full emotional commitment from a responsible caretaker.” (*In re J.C.* (2014) 226 Cal.App.4th 503, 527.)

When reunification services have failed and the court holds a hearing pursuant to section 366.26, the court must determine whether the child is likely to be adopted. If so, with limited exceptions, the court must terminate parental rights and order the child placed for adoption. (§ 366.26, subd. (c)(1).) Under section 366.26, subdivision (c)(1), the denial of reunification services “shall constitute a sufficient basis for termination of parental rights” unless “(B) [t]he court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship. . . .” The parent has the burden of establishing the applicability of the beneficial relationship exception. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 574.)

In *In re G.B.* (2014) 227 Cal.App.4th 1147, 1165–1166, a different panel of this division explained: “ ‘The “benefit” prong of the exception requires the parent to prove [that] his or her relationship with the child “promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” [Citations.] No matter how loving and frequent the contact, and notwithstanding the existence of an “emotional bond” with the child, “the parents must show that they occupy ‘a parental role’ in the child’s life.” [Citations.] The relationship that gives rise to this exception to the statutory preference for adoption “characteristically

aris[es] from day-to-day interaction, companionship and shared experiences. Day-to-day contact is not necessarily required, although it is typical in a parent-child relationship.” [Citation.] Moreover, “[b]ecause a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” ’ ’

The court in *In re Autumn H.* explained that “[i]nteraction between natural parent and child will always confer some incidental benefit to the child.” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) The court must “balance[] the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer.” (*Autumn H.*, at p. 575.) Only if “severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed” is the preference for adoption overcome.” (*Ibid.*) “[A] child should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree but does not meet the child’s need for a parent. It would make no sense to forgo adoption in order to preserve parental rights in the absence of a real parental relationship.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

To determine whether the beneficial relationship exception applies, the court looks to such factors as “[t]he age of the child, the portion of the child’s life spent in the parent’s custody, the ‘positive’ or ‘negative’ effect of interaction between parent and child, and the child’s particular needs.” (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.) We review the juvenile court’s finding for substantial evidence. (*In re G.B.*, *supra*, 227 Cal.App.4th at p. 1166, fn. 7.)³

³ There is some conflict as to the proper standard of review of a challenge to a juvenile court’s ruling as to whether one of the exceptions to adoption applies. (See *In re Autumn H.*, *supra*, 27 Cal.App.4th at pp. 575–577 [substantial evidence]; *In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351 [applying abuse of discretion but recognizing that differences in standards not significant]; *In re E.T.* (2018) 31 Cal.App.5th 68, 76 [applying substantial evidence standard to existence of beneficial parental relationship

Although it is a close case, we conclude the evidence is sufficient to support the juvenile court's decision. We recognize Mother's admirable accomplishment in maintaining her sobriety for two years. However, there is no dispute that at the time of the section 366.26 hearing, Mother was still unable to care for the children. And once a hearing pursuant to section 366.26 has been set, the role of the court is not to "reward[] Mother for her hard work and efforts to reunify"; rather, the focus is on the best interests of the child who needs permanency and stability. (*In re J.C.*, *supra*, 226 Cal.App.4th at p. 527.)

We also recognize that Mother visited regularly with the children, and, although she did not always take advantage of her opportunities for telephone conversations with them, she called them often. And, as Mother points out, she participated in therapy with Robbie in order to improve her bond with him, she redirected Robbie successfully and helped Antonio with his homework during visits, and both Antonio and Robbie enjoyed visiting with her and had said they wanted to live with her.

The record contains other evidence, however, that supports the juvenile court's ruling. Although Antonio had lived with Mother the first seven years of his life and Robbie the first five years, the boys had been out of Mother's care for two and a half years at the time of the section 366.26 hearing. During their years with her, Mother's ability to care for them had been demonstrably harmed by her drug use: Their physical needs were not met, as shown by their decayed teeth, dirt caked on their skin, and flea bites. Antonio said his parents slept all day and he had to wait for them to wake up to feed him, he had to wake them so they could take the children to school, and he had missed so much school he had to repeat first grade. And Mother acknowledged that her bond with the children had been compromised by her drug use. For several months, Mother had unsupervised weekend visits with Antonio and Robbie, but Grandmother

and abuse of discretion standard to whether there is compelling reason to find termination would be detrimental to child].) We agree with *In re Jasmine D.* and *In re G.B.*, *supra*, 198 Cal.App.4th at p. 1166, fn. 7, that, in this context, the practical differences between the two standards are minor. We would reach the same result under either standard.

reported that they sometimes wore the same clothes all weekend and were not properly fed, they spent the night at an unapproved home, and Antonio was exposed to cat hair, to which he was severely allergic. Her visits were reduced to being supervised in April 2017 after she used corporal punishment on Antonio and Robbie, and her visits with them had remained supervised. In June 2017, when pressed, Mother said she did not really feel attached to Robbie. She failed to follow through on her expressed intention to see the boys off to school on their first day of school, and she did not contact them before or after school that day. And the social workers in the case questioned the strength of Mother's bond to Antonio and Robbie. While there is evidence that Mother shared a bond with the children, the juvenile court could properly conclude that Mother did not occupy a parental role in Antonio and Robbie's lives that outweighed the benefits of a stable adoptive home.

Mother draws our attention to a recent case from the First District Court of Appeal, *In re E.T.*, *supra*, 31 Cal.App.5th 68, in which our colleagues in Division Three reversed a juvenile court's finding that the beneficial relationship exception was not applicable. But the question before is whether the facts of *this* case compelled the trial court to apply the exception. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at pp. 575–576 [exception must be examined on case-by-case basis].) And we are bound by the principle that “[i]t is the trial court’s role to assess the credibility of the various witnesses, to weigh the evidence to resolve the conflicts in the evidence. We have no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of witnesses or to resolve conflicts in the evidence or the reasonable inferences which may be drawn from that evidence. [Citations.] Under the substantial evidence rule, we must accept the evidence most favorable to the order as true and discard the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact.” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52–53 [upholding finding of no beneficial parent-child relationship].)

On this record, the juvenile court could properly conclude this is not an “extraordinary” case that overcomes the statutory preference for adoption when a parent

has failed to reunify with his or her children after receiving reunification services. (See *In re G.B. supra*, 227 Cal.App.4th at pp. 1165–1166.) In reaching this conclusion, we recognize that Mother shares a bond with Antonio and Robbie, and we cannot help but hope that their adoptive parents will allow her to maintain contact with them. However, bearing in mind both the legislative preference for stability once reunification efforts have failed (*In re J.C., supra*, 226 Cal.App.4th at p. 527) and the standard of review on appeal (*In re G.B., supra*, 227 Cal.App.4th at p. 1166, fn. 7), we must uphold the juvenile court’s order.

We touch briefly on one other point. While this appeal was pending, Mother brought a motion asking us to take additional evidence pursuant to Code of Civil Procedure section 909. In the motion, she offered to present evidence of the following: In January 2018, before parental rights were terminated, Robbie was referred for mental health services to address his aggressive behaviors, but Grandmother did not ensure he attended therapy sessions regularly. By March 2018, there were concerns that Grandmother often got Antonio and Robbie to school 30 to 90 minutes late. On June 2, 2018, Grandmother moved out of her home and lived with Antonio and Robbie in a series of hotel rooms with little to eat. The Department did not find them until July 6, 2018. The boys were removed from Grandmother’s care and placed with the adoptive foster family where A.E. and J.C. resided, and Grandmother did not visit them.

We denied the motion to take additional evidence. (See *In re Zeth S.* (2003) 31 Cal.4th 396, 399–400 [except in “rare and compelling case,” appellate court may not receive and consider postjudgment evidence to reverse the judgment].) We follow the general rule that we consider the correctness of the juvenile court’s order “ ‘as of the time of its rendition, upon a record of matters which were before the trial court for its consideration.’ ” (*Id.* at p. 405.) And, in any case, nothing in the proffered evidence calls into question the juvenile court’s conclusion that Antonio and Robbie are generally adoptable. (See *In re Jennilee T.* (1992) 3 Cal.App.4th 212, 223 & fn. 11 [finding of adoptability does not require a family “ ‘waiting in the wings.’ ”].) Because the boys are generally adoptable, this is not the “rare and compelling case” in which new evidence—

here, about the suitability of the paternal grandmother as an adoptive placement—is appropriately considered on appeal. (*In re Zeth S.*, at p. 400.)⁴

III. DISPOSITION

The February 13, 2018 order is affirmed. The appeal is dismissed as to the two younger children (A.E. and J.C.).

⁴ We do not preclude any appropriate application to the juvenile court based on more recent developments.

TUCHER, J.

WE CONCUR:

POLLAK, P. J.

BROWN, J.

In Re A.E. et al (A153671)